

1984 WL 249943 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 25, 1984

*1 Mr. Steve K. Good

Director of Finance and Personnel
South Carolina Judicial Department
Post Office Box 50507
Columbia, South Carolina 29250

Dear Mr. Good:

By your letter to the Attorney General's Office dated July 10, 1984, you have asked our opinion as to the effective date of salary increases for the 88 Justices and Judges. Though the answer is not completely from doubt, it is the opinion of this Office that salary increases would be effective at the beginning of the first pay period of the 1984-85 fiscal year, on June 17, 1984.

Section 4 of Act No. 512 of 1984 provides the appropriations for, among other items, salaries of the Chief Justice of the Supreme Court and the four Associate Justices, the Chief Appeals Court Judge and the Associate Judges, thirty-one Circuit Court Judge, and forty-six Family Court Judges. With the exception of appropriations for the Chief Justice and the Chief Appeals Court Judge, appropriations for the remaining justices and judges are not individualized; a lump sum figure is specified, with the number of judges among whom the appropriation is to be divided. No effective date for increases in salary was specified within the Act. Thus, it is necessary to ascertain the legislature's intent and construe the Act to give effect to that intent. [State ex rel. McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E.2d 778 (1964).

Section 131 of the Appropriations Act (No. 512) provides in part that

. . . all appropriations for compensation of State Employees shall be paid in twice-monthly installments to the person holding such position. In order to provide a regular and permanent schedule for payment of employees, it is hereby established that the payroll period shall begin on June 17, with the first pay period ending on July 1st. The payroll period shall continue thereafter on a twice-monthly schedule as established by the Budget and Control Board. . . .

Unquestionably, a judge is a public or state officer, 48A C.J.S. *Judges*, § 2; [Article V, Section 11 of the Constitution of South Carolina](#), and as such would not generally be considered a state employee. However, it has been stated that '[t]he holder of a public office is in the employment of the public . . . ' [Application of Sweeney](#), 1 Misc.2d 125, 147 N.Y.S.2d 612, 615 (1955); see also [Hudson v. Annear](#), 101 Colo. 550, 75 P.2d 587 (1938) and [Pardue v. Miller](#), 306 Ky. 110, 206 S.W.2d 75 (1947), both citing Chief Justice Marshall from [United States v. Maurice](#), Fed. Cas. No. 15745, 2 Brock. 96.¹ Because the Appropriations Act contains no other provision as to the effective date for salary increases for members of the Judiciary, it would be appropriate, given the above-cited authority, to consider the members of the Judiciary to be state employees for the purpose of establishing the effective date.

State employees generally received a six percent increase in salary, with certain agency heads and other governmental officials, including members of the Judiciary, receiving increases of varying amounts within the Appropriations Act. Such salary increases for all other state employees, department heads, and so forth were to be effective with the first pay period of the new fiscal year, which began on June 17, 1984; included therein were other employees of the Judicial Department. There appears to be no reason to treat members of the Judiciary any differently from other employees of the Judicial Department. To avoid absurd, unjust results, the members of the Judiciary should be on the same pay schedule, receiving their salary increases at the same time as all other employees. [South Carolina State Board of Dental Examiners v. Breeland](#), 208 S.C. 469, 38 S.E.2d 644 (1946).

*2 Moreover, it should be noted that, generally, the salary of a judge or justice is fixed and determined for the particular office and not for the incumbent occupying that office. 48A C.J.S. Judges, § 77. For each category of judge, a line item amount and the number of judges to which the line item is applicable, are specified. Assuming, then, that the General Assembly intended that the total of the line item was to be divided evenly among the number of judges specified, the salary increase must be effective at the beginning of the first pay period, June 17; otherwise, the entire amount allocated for each category of judge could not be expended within the 1984-85 fiscal year. There is no indication that the members of the Judiciary were to receive less than a pro-rate share of their particular line item or that the division should be made any other way. Applying this logic would appear to be consistent with legislative intent.

While South Carolina has no official legislative history to utilize in interpreting statutes, [Tallevast v. Kaminski](#), 146 S.C. 225, 143 S.E. 796 (1928), this Office has been advised informally by the Ways and Means Committee of the House of Representatives that all officers and employees on the state payroll were intended to follow the same pay schedule, beginning with the first pay period of the 1984-85 fiscal year, with salary increases, including increases in the salaries of members of the Judiciary, effective on June 17, 1984. Thus, the interpretation of this Office would be consistent with the unofficial views of the Ways and Means Committee.

Section 136 of the Appropriations Act provides for travel and subsistence for various state officers and employees. Unlike Section 131, Section 136 makes a distinction between state employees and members of the Judiciary as to reimbursement of travel and subsistence allowances. Due to the nature of travel undertaken by judges, it would be reasonable to treat reimbursement of judges differently from state employees. Furthermore, Section 136 was to become effective on July 1 rather than June 17, thus allowing different interpretations of Sections 131 and 136. To give effect to both sections, it would be reasonable to assume that the General Assembly intended to treat salaries in a manner different from travel reimbursements. Thus, by our construction, each section would be harmonious with the other and both would be consistent with the Act's purpose. [Crescent Manufacturing Company v. Tax Commission](#), 129 S.C. 480, 124 S.E. 761 (1924).

The interpretation contained herein is not free from doubt. A comparison of the portion of Section 10 (Attorney General's Office), and a proviso following the line items, reveals that solicitors, who are also unquestionably state officers, are to receive a set salary; comparing these provisions in Act No. 512 of 1984 with similar provisions in Act No. 151 of 1983 makes more certain the interpretation that the General Assembly intended that the solicitors receive a salary increase and that such increase be effective for the fiscal year. Similar drafting in the portion of the Appropriations Act covering the Judicial Department next year could forestall similar interpretative difficulties in the future.

*3 In conclusion, while our response is not free from doubt, we would advise that salary increases for the 88 Judges and Justices should be effective with the first pay period of the 1984-85 fiscal year, which began on June 17, 1984.

Sincerely,

Patricia D. Petway
Assistant Attorney General

Footnotes

- 1 An opinion of this Office dated March 16, 1984, must be distinguished. That opinion found an officer not to be an employee for purposes of a law implementing a salary increase. Act No. 238, 1983 Acts and Joint Resolutions required that certain millage be used for across-the-board pay raises for employees of the Greenville County Schools. In the instant case, the issue is not who is to receive pay raises, as in the opinion of March 16. Clearly, the members of the Judiciary were intended to receive an increase; here, the only question is the effective date of the increase.

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